IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13-6-2005

CORAM

THE HONOURABLE MR.JUSTICE N.DHINAKAR
AND
THE HONOURABLE MR.JUSTICE M.CHOCKALINGAM

C.A.No.910 of 1997

State by Public Prosecutor .. Appellant/Complainant

vs

1. Ismail
2. Murugesan .. Respondents/Accused

This criminal appeal is preferred under Sec.378 of the Code of Criminal Procedure against the judgment passed by the Additional District and Sessions Judge cum Chief Judicial Magistrate, North Arcot Ambedkar District at Vellore, in S.C.No.82/96 dated 14.3.1997.

For Appellant : Mr.S.Jayakumar
Additional Public Prosecutor

For Respondents: Mr.T.Munirathina Naidu for R1

Mr.K.M.Subramanian for R2

JUDGMENT

(Judgment of the Court was delivered by M.CHOCKALINGAM, J.)

This is an appeal, brought forth by the State, aggrieved over the judgment, made by the Additional Sessions Court, Vellore, in S.C.No.82 of 1996, acquitting the first respondent herein from the charges levelled against him under Sec.302 read with 34, 109 and 379 of I.P.C. and also acquitting the second respondent herein from the charges levelled against him under Sec.302 and 379 of I.P.C.

2. The short facts necessary for the disposal of this criminal appeal, are as follows:

(a) P.W.1 Fiaz Ahmed, was living at Melvisharam village. The deceased Farooq Ahmed @ Jana was his elder brother, and they have four more brothers. One of their brothers namely Mushtaq, has got a bungalow in the said place. He was living at Bangalore. The deceased Jana, who was employed in tea shops for eking his livelihood, was looking after the bungalow. P.W.1 last met his brother, the deceased, on 13.11.1994 at about 11.30 A.M. He did not see him for a few days therefrom. P.W.4 Sujath Ali Sahib, a Doctor by profession, had his Clinic just opposite to that bungalow, where the deceased was staying.

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On the day of occurrence namely 13.11.1994, at about 10.30 P.M., the deceased Jana met P.W.4 and asked medicine for his ailment. P.W.4 told him to come the next morning. P.W.4 went in the autorickshaw of P.W.5 Sattar Basha. Since the deceased was not found for a few days, P.W.1 went to the bungalow, where the deceased was staying, found it locked, came aside and peeped through the window. P.W.1 broke up the door and found the dead body of the deceased in the first floor. He also found a dagger by the side of the deceased. On coming to know about the same, he rushed to his mother and informed her and also the relatives. He, then, rushed to Arcod Police Station, where P.W.18 Ravindran, Sub-Inspector of Police, was on duty, and gave Ex.P1 report, on the strength of which, a case came to be registered by the Sub Inspector of Police in Crime No.1556 of 1994 under Sec.302 of I.P.C. The First Information Report Ex.P2 was sent to the concerned Court.

(b) On receipt of the copy of the F.I.R., P.W.19 Ramadoss, Inspector of Police of the said Police Station, took up investigation, proceeded to the spot, made an inspection of the place of occurrence in the presence of the two witnesses and prepared Ex.P3 observation mahazar and Ex.P27 rough sketch. He recovered the material objects which were available at the place of occurrence, in the presence of two witnesses namely P.W.3 Krishnamurthy, Village Administrative Officer, and another witness. The scene of occurrence along with the dead body was photographed through P.W.12 Mani, a Photographer. M.O.13 the photos, and M.O.14 the negatives, were marked before the lower Court. The Investigating Officer conducted the inquest on the dead body in the presence of the witnesses and panchayatdars, and he prepared Ex.P29 inquest report. A requisition was sent to the Government Hospital, Arcod, under Ex.P12, for conduct of postmortem.

(c) On receipt of Ex.P12 requisition, P.W.10 Dr.Rajeswari, attached to the Government Hospital, Arcod, conducted the autopsy on the dead body of Jana and found the following injuries:

> "1. Head distorted due to decomposition and destruction by the maggots. Soft parts of the nose and scalp in the right temporal posterior half of right parietal and right sides of occipital regions, of 20 x 18 cms sized have been destroyed by the maggots incasing the underlying skull bones. Fracture of middle of right parietal bone in the middle 9 cms long antero posteriorly placed, enduing into a triangular hole in the posterior aspect, apex pointing anteriorly with each limb 4 cms & back 3 cms long through which the liquified brain runs out as thick greyish fluid. The edges of the scalp is irregular, friable, partly decomposed and covered with numerous crawling maggots. Nasal bones and maxillary bones imposed. Upper central incisors found loosely in the oral cavity. All the teeth are very loose and easily came out of the sockets.
>
> 2. A gaping wound 6 x 2 x 1 cm, oblique on the left parietal region 3 cms above & posterior to the left ear.
>
> 3. A transverse gaping wound 3 x 2 cm x bone deep 2 cms

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behind the left ear.

4. A transverse gaping wound 8 x 1 cm x bone deep on the middle of occipital region. All the wound are covered with numerous crawling maggots of various sizes.

5. Numerous holes of various sizes, 0.1 cm to 2 cms diameter thro' which numerous maggots crawling are seen over the anterior aspect of neck, axilla, grains around the anal region and perineum. Anal orifice destroyed."

The Doctor has given her final opinion under Ex.P17 to the effect that the deceased would appear to have died of shock and haemorrhage due to the multiple head injuries sustained, about 5 to 7 days prior to autopsy.

(d) After the receipt of the final opinion, the investigation was further proceeded with. The deceased was involved in number of criminal cases, which came to the notice of the investigating agency at the time of investigation. The Finger Print Expert, who came to the spot, took up the finger prints available at the spot, which were compared with the finger prints of the accused found in Crime No.1610 of 1994, and they were found to be tallying with the finger prints of the first accused. Then, the Investigating Officer searched for the first accused and came to know that he was in Central Prison, Vellore, in connection with some other case. Following the same, a requisition was given, and he along with the second accused was taken into custody, and both of them were enquired.

(e) On 24.2.12995 at 6.00 P.M. A-1 was taken into custody, and he gave a confessional statement in the presence of two witnesses, the admissible part of which was marked as Ex.P5. On the same day, the second accused was also enquired. At about 7.45 P.M., he gave a confessional statement in the presence of the same witnesses, and the admissible part was marked as Ex.P6. Pursuant to the confessional statements, on 25.2.1995, from P.W.8 Ramamurthy Aachari, M.O.2 gold ring, was recovered. Ex.P7 a chit, was also recovered from him, which, according to the prosecution, was a chit for pledging of the jewels by the first accused with P.W.8. Subsequently, at Kadpadi, A-1 identified one John Peter, from whom M.O.3 a wrist watch, has been recovered under Ex.P8 mahazar.

(f) The identification parade was conducted by P.W.9 Killivalavan, Judicial Magistrate. Vellore, in the Central Prison, and at that time, P.W.5 identified A-2, while P.W.6 Adam Basha, identified A-1 and A-2. The identification proceedings were marked as Ex.P11. On completion of the investigation, the final report was filed.

3. In order to establish the charges levelled against the accused, the prosecution marched 19 witnesses and relied on 29 exhibits and 18 material objects. On completion of the evidence on the side of the prosecution, both the accused were questioned under Sec.313 of the Code of Criminal Procedure as to the incriminating circumstances found in the evidence of the prosecution witnesses. The

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accused denied them as false. No defence witnesses were examined, and no exhibits were also marked on their side. After hearing both sides, the lower Court took the view that the prosecution has not proved its case and thus, passed a judgment of acquittal, which is the subject matter of challenge before this Court.

4. The learned Additional Public Prosecutor appearing for State, with vigor and vehemence, would submit that the lower Court has not properly appreciated the evidence put forth by the prosecution; that it is true that the prosecution relied on the circumstantial evidence; that the prosecution has proved all the circumstances necessary; that apart from that, the material objects what have been recovered at the time of investigation, pursuant to the confessional statements by the accused, namely the gold ring and the wrist watch originally belonging to the deceased, through the accused, would clearly prove the nexus between the accused and the crime; that the lower Court has not given proper consideration for the evidence adduced, but has much relied on the extraneous considerations, which were not relevant for the purpose of the case; that both the witnesses as to the confessional statements and recovery, have been marched before the Court; that the prosecution to its benefit, had the evidence of P.W.6, according to whom, both the accused were in the company of the deceased for short a while before the occurrence; that under the circumstances, the lower Court should have taken into consideration the evidence as to the last seen theory and also the material objects, which originally belonged to the deceased and which were also in the custody of the persons, who were identified by the accused, pursuant to the confessional statements, and hence, the lower Court should have found them guilty, and instead, the lower Court has acquitted them erroneously, which has got to be set right by this Court.

5. The Court heard the learned Counsel appearing for the respondents on the above contentions.

6. After careful consideration of the rival submissions, this Court is of the considered view that the judgment of the lower Court has got to be sustained.

7. The short case of the prosecution, as could be seen, was that on the day of occurrence namely 13.11.1994, at about 11.30 A.M., the deceased was staying in Door No.169, Anna Salai, Melvisharam, and the respondents herein entered into the said house, and due to the quarrel as to the division of the properties, which were originally stolen by all of them, they killed the deceased that time and escaped therefrom. In order to substantiate the charges levelled against them, as referred to above, the prosecution did not have any direct evidence, but relied only on the circumstantial evidence. Needless to say that in a case where the prosecution rests its case on the circumstantial evidence, it must show all the necessary circumstances which are sufficient pointing to the guilt of the accused, and apart from that, they must make a complete chain, which would be pointing to the hypothesis that none else, except the accused, could have committed the offence. In the instant case, the Court has to necessarily point out that no one circumstance has been proved, which, according to the

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prosecution, was pointing to the guilt of the accused.

8. To start with, the prosecution case was that originally, the deceased and the accused before the Court were involved in number of crimes of theft, and as regards the division of the stolen properties, they had some quarrel; but, not even one case has been brought to the notice of the Court, where the accused were also involved. P.W.1, who is the brother of the deceased, has not stated either at the earliest stage in the F.I.R., or in Sec.161 Statement recorded subsequently, or even at the time of evidence, pointing out that his brother was involved in any such activities. Thus, in the instant case, what was available for the prosecution in order to nab the accused, was the finger print what was found on the bureau at the place of occurrence. It is pertinent to point out that the finger prints what were taken, were also found to be tallying, according to the police agency, with the finger prints of the first accused. According to the prosecution, in all the cases, one other accused was also involved, and the second accused was also booked; but, those cases remained not shown by the prosecution.

9. The prosecution made much reliance on the evidence of P.W.6, according to whom, he last saw the deceased in the company of both the accused. It is pertinent to note that the statement of the said witness was not recorded by the police agency shortly either, or it was sent to the Court within a reasonable time. That apart, even his evidence does not specify the date, when he found all of them together. Hence, no significance could be attached to his evidence. Further, the prosecution relied on the alleged confession made by the accused, pursuant to which the recovery of M.O.2 was made from P.W.8 Ramamurthy. According to P.W.8, the said jewel M.O.2, which is alleged to have the initial "J", referring to Jana, the deceased, was pledged by the first accused with him for a sum of Rs.400/-, after getting the thumb impression of the first accused in Ex.P7, a pledge receipt. The said receipt has also been produced before the trial Court, which was recovered at the time of the investigation. It is pertinent to point out that the said document did not contain the signature of the first accused; but, it contained only a thumb impression. The lower Court has clearly pointed out that the first accused was in the habit of putting his signature and not affixing the thumb impression. Apart from that, when the prosecution comes forward to state that the thumb impression was one, which was affixed by the first accused, it should have taken proper steps to send the thumb impression along with the admitted thumb impression of the first accused to the expert for the purpose of comparison, but failed to do so. It remains to be stated that a comparison of the signature in the original receipt what is found in Ex.P7, and the signature of P.W.8 in the original evidence would clearly indicate that the document has been subsequently created to suit the convenience of the prosecution case. Apart from that, the evidence of P.W.8 cannot be relied for the simple reason that he is not a licensed Pawn Broker, and Ex.P7 is not even a receipt printed; but it is a written receipt in a white paper, which document could be created at any point of time. Thus, except this, the prosecution had no evidence at all to bring forth before the Court below.

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10. In view of the discussions made above, it can be well stated that it is a case, where the prosecution has miserably failed to bring to the notice of the Court any circumstance, which is worth in nature, showing the nexus of the accused with the crime. Thus, the prosecution has not proved the case in any way. This Court is of the view that the lower Court had marshalled the evidence proper and arrived at a correct conclusion by making a judgment of acquittal, and this Court is unable to notice any reason to interfere in the judgment of the lower Court. The judgment of the lower Court has got to be sustained.

11. In the result, this criminal appeal fails, and the same is dismissed. The first respondent, who has been arrested in connection with this case on the basis of a NBW issued by this Court, and who is in Jail, shall be released forthwith, unless he is wanted in connection with any other crime.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To:

1. The District and Sessions Judge
North Arcot District, Vellore.

2. The Additional District and Sessions Judge cum
Chief Judicial Magistrate, North Arcot Ambedkar
District, Vellore.
3. The D.G.P., Chennai.
4. The District Collector, Vellore.
5. The Public Prosecutor, Madras.
6. The Superintendent, Central Prison, Vellore.
7. The Judicial Magistrate, Arcot
8.-do- thro The Chief Judicial Magistrate, Vellore.

+1cc to Mr.T.Munirathina Naidu, Advocate Sr 23838

nsv/
GM (CO)
km/16.6.

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